

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF DUKE ENERGY)	
CORPORATION, CINERGY CORP., DUKE)	
ENERGY OHIO, INC., DUKE ENERGY)	CASE NO.
KENTUCKY, INC., DIAMOND ACQUISITION)	2011-00124
CORPORATION, AND PROGRESS ENERGY,)	
INC. FOR APPROVAL OF THE INDIRECT)	
TRANSFER OF CONTROL OF DUKE ENERGY)	
KENTUCKY, INC.)	

O R D E R

On April 28, 2011, Duke Energy Corporation ("Duke Energy"), Cinergy Corp., Duke Energy Ohio, Inc. ("Duke Ohio"), Duke Energy Kentucky, Inc. ("Duke Kentucky"), Diamond Acquisition Corporation, and Progress Energy, Inc. ("Progress Energy") (collectively "Joint Applicants"), filed a document designated as an errata to the original direct testimony of Mr. William Don Wathen, Jr., General Manager and Vice President of Rates for Duke Ohio and Duke Kentucky. The errata consists of the addition of a phrase to one sentence in Mr. Wathen's original testimony at page 6, line 21, to page 7, line 1.

Based on the filing of the errata and being otherwise sufficiently advised, the Commission finds that the Joint Applicants filed, on April 4, 2011, a Joint Application requesting approval, under KRS 278.020(5) and (6), of the indirect transfer of control of Duke Kentucky. The Joint Application, at Paragraph Nos. 30-37, names seven witnesses whose prepared direct testimonies are attached as exhibits thereto and lists the general subject matter of their respective testimonies. Mr. Wathen's testimony,

which was attached as Exhibit M, is described in Paragraph No. 34 of the Joint Application as addressing the existing electric and gas rates of Duke Kentucky. That paragraph further states that, “He [Mr. Wathen] will also explain how the proposed merger will not adversely affect the rates of Duke Energy Kentucky and how its customers are likely to see savings in future base rate proceedings.”

Mr. Wathen’s original direct testimony, at page 6, line 21, to page 7, line 1, states as follows:

Importantly, costs to achieve the merger savings will not be included in any test year for recovery in electric or gas rates by Duke Energy Kentucky.

The April 28, 2011 errata to Mr. Wathen’s testimony states as follows:

Importantly, costs to achieve the merger savings will not be included in any test year for recovery in electric or gas rates by Duke Energy Kentucky, ***without Commission approval.***

(Emphasis in original). Although this errata adds only three words to one sentence in Mr. Wathen’s original testimony, the impact of those three words is very significant. What had been a clear and unequivocal commitment by the Joint Applicants that none of the costs to achieve the merger would be recovered in Duke Kentucky’s rates is now being withdrawn, and substituted in its place is a reservation of right to recover merger costs from Duke Kentucky’s ratepayers, subject to Commission approval. The errata to Mr. Wathen’s testimony included no discussion of how or why his original testimony needs to be corrected and no explanation of when and how he discovered that his original testimony needed to be corrected. His original testimony does, however, include verification that he signed under oath attesting that “the answers contained therein are true and correct to the best of his information, knowledge and belief.” Thus,

the Joint Applicants unequivocal commitment to not recover merger costs from Duke Kentucky's ratepayers cannot now be withdrawn simply by filing an unsupported and unexplained errata to Mr. Wathen's testimony.

The Commission further finds that this errata to Mr. Wathen's testimony is not only inconsistent with his original testimony, it is inconsistent with the Joint Application. At Paragraph No. 26, the Joint Application addresses anticipated savings that will result from the integration of Duke Energy and Progress Energy in the areas of information technology, supply chain functions, generation operations, corporate and administrative programs, and inventories. The Joint Application then states that, "There will be upfront costs associated with integrating these functions to yield benefits, but the future savings in these areas will be passed on to the company's customers in the normal course of rate making proceedings." Thus, while the Joint Application recognizes that there will be costs incurred to achieve future savings, the commitment is to pass the savings on to ratepayers without any reference to a reservation of right to pass on the costs to achieve the merger. In addition, at the end of the Joint Application, at pages 17-19, there are seven numbered paragraphs containing the specific relief being requested by the Joint Applicants; and none of those paragraphs request approval to recover merger costs from ratepayers or the right to defer merger costs for recovery from ratepayers at some future time.

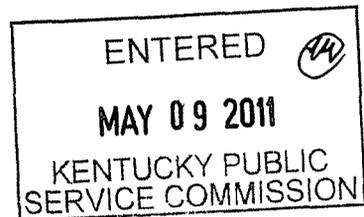
Based on these findings, the Commission rejects for filing the errata to Mr. Wathen's testimony. If the Joint Applicants desire to withdraw their commitment to not recover merger costs from Duke Kentucky's ratepayers, the proper procedure to do so

is to file the errata along with an amendment to their Joint Application and a supporting motion, in accordance with 807 KAR 5:001, Section3(5).

Due to the substantive nature of the errata to Mr. Wathen's testimony, if it is refiled with an amendment to the Joint Application, the date the amendment is filed will be considered the application filing date for computing the statutory time for review under KRS 278.020(6).

IT IS THEREFORE ORDERED that the Joint Applicants' filing on April 28, 2011 of an errata to the original testimony of Mr. Wathen is rejected as deficient due to the absence of the requisite explanatory information discussed in the findings above and an amendment to the Joint Application with a supporting motion.

By the Commission



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